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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,662

05/24/2007

Ari M. Melnick

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6667

7590

06/09/2010

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EXAMINER

AUDET, MAURY A

ART UNIT

PAPER NUMBER

1654

MAIL DATE

DELIVERY MODE

06/09/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/582,662	MELNICK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MAURY AUDET	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 63-74 is/are pending in the application.
- 4a) Of the above claim(s) 66-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 63,64 and 74 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/1/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse in the reply filed on 4/19/10 is acknowledged, as drawn to: "the invention of Group I, Claims 1, 7-12, 17, 20 and 26, drawn to a compound/peptide. In this regard, it is noted that the elected claims have been canceled and replaced with new Claims 63-73. It is believed that in view of the wording of Claim 1 covering the special feature (i.e., the conserved sequence of SEQ ID NOS: 1 and 2), there is no lack of unity issue with respect to SEQ ID NOS: 1 and 2, and both sequences should be considered in the current application. **If the Examiner disagrees, then SEQ ID NO: 1 will be elected.**"

Since Applicant is really not claiming the core peptide (9 mer GRSIHEIPR) found in both SEQ ID NOS: 1 and 2, but really any peptide of 21 amino acids or less comprising GRSIHEIPR; art on one distinct peptide would not read on another, absent evidence to the contrary. Thus, a search and examination of any peptide that meets such criteria turns on its own merits. Therefore, SEQ ID NO: 1 is accepted as the elected peptide of the invention. L or D substituted SEQ ID NO: 1 variants, which would constitute distinct peptides themselves and individual and distinct searches thereof, fall outside the election of SEQ ID NO: 1

Thus, new claims 63-64 and 74 are examined on the merits, but only as drawn to elected SEQ ID NO: 1. Claims 65-73 are withdrawn as being drawn to non-elected subject matter.

### ***Claim Objections***

Claims 63-64 and 74 are objected to because of the following informalities:

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The claims have not been amended commensurate in scope with the elected peptide of the invention, SEQ ID NO: 1.

Appropriate correction is required.

***Allowable Subject Matter***

Claims 63-64 and 74, as drawn to a 21 amino acid or less peptide comprising SEQ ID NO: 1 were not found to be reasonably taught or suggested by the prior art of record. Were the claims amended thereto, they would likely receive favorable consideration (pending the updated search of the art and no new art presenting itself of record thereon).

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAURY AUDET whose telephone number is (571)272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 6/7/2010

/Maury Audet/  
Primary Examiner, Art Unit 1654